



Commonwealth
of Massachusetts

OCPF Online
www.state.ma.us/ocpf
Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

January 26, 1998
AO-98-01

Kipp Maloney
NFIB/SAFE Trust Administrator
National Federation of Independent Business
600 Maryland Avenue S.W., Suite 700
Washington, D.C. 20024

Re: Membership Communications and fundraising on behalf of PAC

Dear Mr. Maloney:

This letter is in response to your request for an advisory opinion which contains several questions regarding the relationship between the National Federation of Independent Business, a not-for-profit corporation (the "Corporation") and its associated state political action committees. The Corporation is funded, in part, by members which are business corporations.

Based on your conversations with the office's legal staff, the questions which are relevant to the operation of the political action committee organized in Massachusetts, NFIB/Massachusetts SAFE Trust Political Action Committee (the "PAC"), may be answered as follows:

Question: May the Corporation, using corporate treasury funds, make communications, which are limited to its membership, when the communications advocate the election or defeat of a candidate running for statewide or state legislative office?

Answer: Yes, if the communication takes place "in the normal course of corporate affairs and does not involve expenditures specifically designed to influence the electoral process." See Opinion of the Attorney General, November 6, 1980 (copy enclosed). For example, if the Corporation issues a quarterly newsletter to its members and the communication advocating the election or defeat of a candidate is included in one of the quarterly newsletters, such communication would not be prohibited by the campaign finance law. On the other hand, if the Corporation issues a special election-related publication urging members to support or oppose candidates, the expenditure would be prohibited by the campaign finance law. See M.G.L. c. 55, s. 8.

Section 8 states in relevant part as follows:

[N]o business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding,

promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

A non-profit corporation which is funded by member business corporations may not make "contributions" or "expenditures" See AO-91-31, in which the office stated that "M.G.L. c. 55, s. 8 generally prohibits a non-profit corporation which receives funds from a business corporation from making political contributions . . . " See also Op. Atty. Gen., November 6, 1980 which noted that "If a corporation cannot directly provide facilities to a candidate or committee by virtue of the statute, it may not do so indirectly through the associations to which it belongs."

In 1994 the campaign finance law was amended to state that "communications from a membership organization, not including a corporation subject to section eight, to its members and their families on any subject shall not be deemed to be a contribution or expenditure." M.G.L. c. 55, s. 1 (emphasis added). The office's regulations define a "membership organization" as an organization "which identifies individuals within the organization as members." See 970 CMR 2.02. As noted in an advisory opinion recently issued by this office, if an entity has business corporations rather than individuals as members, it is not a membership organization. See AO-97-15. As a result, expenses by NFIB to distribute a communication which advocates the election or defeat of a candidate would not be a "communication from a membership organization." Such costs would therefore involve the making of "expenditures" or "contributions" subject to section 8 unless the communication is made "in the normal course of corporate affairs."

Question: If the answer to the previous question is "yes," does the Corporation incur a reporting liability for the costs associated with those communications?

Answer: No. If the Corporation makes a communication in the ordinary course of corporate affairs, no "expenditure" or "contribution," which would otherwise have to be reported, has taken place. See M.G.L. c. 55, s. 22.

Question: May the Corporation solicit contributions for the PAC from individuals or entities who are not members of the Corporation?

Answer: Yes, as an agent of the PAC. Contribution checks could be made payable to the PAC and then transferred upon receipt by the Corporation to the PAC. A person or entity which acts as an agent by soliciting or receiving contributions on behalf of a PAC is not a political committee. Such an agent needs to provide to the political committee receiving the contributions a detailed account of all contributions received and expenditures made within three business days. See M.G.L. c. 55, s. 23. **The Corporation must be repaid by the PAC for all expenses incurred in making the solicitation, whether the solicitation is to members or others.**

The campaign finance law defines a "political committee" as any association, organization, or other group of persons "which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . ." See M.G.L. c. 55, s. 1. Therefore, if the Corporation were to solicit contributions made payable to the Corporation and then deposit the checks prior to using the funds to support or oppose candidates, the Corporation would itself be operating as a political committee, which due to its for-profit corporate membership it cannot do. In addition, any expenditures made by the Corporation to benefit the PAC would need to be reimbursed by the PAC within thirty days to avoid an advance or contribution. The Corporation would be prohibited from making such an advance or contribution due to its for-profit membership. See M-97-04.

I have enclosed a *Campaign Finance Guide for Political Action Committees and People's Committees* and other information summarizing the reporting obligations and other responsibilities of PACs registered with this office.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter and conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan" followed by a horizontal line.

Michael J. Sullivan
Director